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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 266

FIRST WISCONSIN TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 6, 1935,
Appellant,

vs.

WISCONSIN TAX COMMISSION, JOHN H. LEENHOUTS, ASSESSOR OF INCOMES OF MILWAUKEE COUNTY, WISCONSIN, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM.

JOHN E. MARTIN,
Attorney General of Wisconsin;
HAROLD H. PERSONS,
Assistant Attorney General of Wisconsin,
Counsel for Appellees.

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vs.

WISCONSIN TAX COMMISSION; JOHN H. LEENHOUTS, ASSESSOR OF INCOMES OF MILWAUKEE COUNTY; STATE OF WISCONSIN; WISCONSIN DEPARTMENT OF TAXATION; AND ELMER E. BARLOW, AS COMMISSIONER OF TAXATION OF THE STATE OF WISCONSIN,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN.

APPELLEES' STATEMENT OPPOSING APPELLATE JURISDICTION.

Pursuant to paragraph 3 of Rule 12 of the Rules of the United States Supreme Court appellees file this statement opposing appellate jurisdiction.

Nature of the Case.

This appeal is a companion to the appeal in the case entitled *William D. Van Dyke, Jr. and Douglass Van Dyke,*

etc. v. *Wisconsin Tax Commission et al.*, and this statement is a repetition, except as necessary solely for adaptation to the difference in parties, of the statement opposing jurisdiction filed in that case.

Like in that case this appeal is from a judgment of the Supreme Court of the State of Wisconsin, affirming an assessment of gift taxes, imposed by the statutes of Wisconsin, against the appellants. Said judgment was entered June 4, 1940, in proceedings in the courts of the State of Wisconsin to review an order and decision of the Wisconsin Tax Commission which affirmed said assessment. The taxes involved were assessed pursuant to the provisions of Section 4 of Chapter 363, Laws of Wisconsin 1933, as amended by Chapter 15 of the Laws of Wisconsin 1935, upon a gift in trust to the appellant on December 6, 1935. The controversy arises over the liability of the appellant to a tax on said gift under said tax law. Appellant claims that it is not liable for the tax because of its contention that the transfer by gift, upon which the assessment was made, was beyond the taxing jurisdiction of the State of Wisconsin. At the time the gift was made the donor, the donees and the trustees of the gift in trust were all residents of the State of Wisconsin.

Statutes Involved.

Article VIII, Section 1 of the Wisconsin Constitution, so far as here material, provides:

> SECTION 1. "* * * Taxes may also be imposed on incomes, privileges and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided."

The Wisconsin Emergency Gift Tax Law, under which the tax here involved was assessed, was enacted by Section 4 of Chapter 363, Laws of Wisconsin 1933, and amended by

Chapter 15 of the Laws of Wisconsin 1935. The pertinent provisions of said law, as so amended, are as follows:

"SECTION 4. EMERGENCY GIFT TAX. (1) An emergency tax is imposed upon transfers of property real, personal or mixed, or any interests therein or income therefrom, in trust or otherwise, to any person, association or corporation, which are made subsequent to the effective date of this act and prior to July 1, 1937, in the following cases, except as hereinafter provided.

"(a) When the transfer is by gift from any person who at the date of such gift was a resident of the state.

"(b) When the transfer is by gift of property within the state or within its jurisdiction and the donor was a nonresident of the state at the date of such gift.

"(c) No tax shall be imposed upon the transfer of any property which is taxable under the inheritance tax law of this state, and any tax paid upon the transfer of any property under the provisions of this section may be applied as a credit upon any inheritance tax which may be imposed under the inheritance tax law upon the same transfer, and no tax shall be imposed upon any tangible personal property of a resident donor when such property is located without this state; provided, however, such property is not without this state temporarily.

"(2) (a) If the transfer is made in property, the clear market value thereof at the date of the gift shall be considered the taxable value of the gift. Where property is sold or exchanged for less than a fair consideration in money or money's worth, then the amount by which the clear market value of the property exceeded the consideration received shall, for the purposes of the tax imposed by this chapter, be deemed a gift and shall be included in computing the amount of gifts made during the year.

"(b) All transfers to the same donee by the same donor within the same calendar year shall be added

together and the aggregate of such transfers shall be considered as one transfer for the purposes of taxation under this chapter, and the rates of tax hereinafter prescribed shall be applied to the aggregate of such transfers made within the same calendar year.

"• • •"

The remaining provisions of said section, specifying the rates of tax, exemptions, and methods of assessment and collection, are not here material.

Statement of Facts.

George D. Van Dyke, at the time of the gift here involved, was an attorney at law of the age of 82, and was and had been all his lifetime a resident of the city of Milwaukee, State of Wisconsin. He owned $270,000 of First Liberty Loan Bonds, which were called for redemption as of June 15, 1935. In the Rules and Regulations promulgated by the Secretary of the Treasury for the redemption of these bonds (Department Circular No. 535, issued April 22, 1935) it was required that said bonds be presented and surrendered to any Federal Reserve bank or branch, or to the Treasury Department at Washington, D. C., and that incorporated banks and trust companies were not agents of the United States for the purposes of such redemption. The Federal Reserve bank nearest to Milwaukee, Wisconsin, was the Federal Reserve Bank at Chicago, Illinois. Having ascertained that said bonds would not be redeemed in gold but that he could collect the same in silver dollars, George D. Van Dyke went to Chicago on November 22, 1935, taking with him $270,000 par value of said bonds and appointed the First National Bank of Chicago, Illinois his agent to surrender said bonds to the Federal Reserve Bank at Chicago for payment in silver dollars. As the Federal Reserve Bank at Chicago, however, did not then have on hand sufficient silver dollars, he returned to Milwaukee, Wisconsin.

Upon being informed that the requisite number of silver dollars had been shipped from Washington, D. C., to and received by the Federal Reserve Bank at Chicago, George D. Van Dyke, accompanied by his son Douglass Van Dyke, on December 6, 1935, went to Chicago and met George B. Luhman, President of the First Wisconsin Trust Company of Milwaukee, Wisconsin, at the offices of the First National Bank of Chicago. Previous thereto two written trust instruments had been prepared.

By one of said trust agreements said George D. Van Dyke transferred $135,000.00 in silver dollars of the United States to his sons Douglass Van Dyke and William D. Van Dyke, Jr., as a gift in trust for the benefit of Louise Lawrence Van Dyke of Milwaukee, Wisconsin, a granddaughter of said George D. Van Dyke and daughter of said Douglass Van Dyke. By the other trust agreement said George D. Van Dyke transferred $135,000.00 in silver dollars of the United States to the First Wisconsin Trust Company of Milwaukee, Wisconsin, as a gift in trust for Louise Van Dyke Hauxhurst of Milwaukee, Wisconsin, a daughter of said George D. Van Dyke.

Both of said trust agreements were signed by the donor, George D. Van Dyke, at Chicago, Illinois, on said December 6, 1935. The first mentioned trust agreement was likewise at the same time signed by Douglass Van Dyke, as one of the trustees, but it had been previously signed by his brother and co-trustee, William D. Van Dyke, Jr., at Milwaukee, Wisconsin. The second trust agreement was signed on behalf of the First Wisconsin Trust Company of Milwaukee, Wisconsin, as trustee, by George Luhman, its president, at Chicago, at the same time as it was signed by George D. Van Dyke, the donor, on said December 6, 1935.

Then George D. Van Dyke, Douglass Van Dyke and George B. Luhman went to the Federal Reserve Bank of

Chicago, where the silver dollars were in the private vaults of the First National Bank of Chicago in said Federal Reserve Bank. They were admitted to said vaults, accompanied by a representative of the First National Bank of Chicago and a representative of the Federal Reserve Bank and the 270,000 silver dollars stored in bags in vaults sealed in the name of the First National Bank of Chicago were delivered to George D. Van Dyke and he receipted therefor. Thereupon he delivered 135,000 of said silver dollars to Douglass Van Dyke as trustee under the first trust agreement who thereupon gave him a receipt therefor by himself and his brother, William D. Van Dyke, Jr., as trustees under the first trust instrument, he having a power of attorney to act for his said brother. George D. Van Dyke at the same time also delivered the other 135,000 silver dollars to George B. Luhman, as President of the First Wisconsin Trust Company of Milwaukee, Wisconsin, who receipted for the same on behalf of said First Wisconsin Trust Company, Milwaukee, as trustee under the second trust instrument.

On the same day, December 6, 1935, that the 135,000 silver dollars were so received, Douglass Van Dyke delivered them to the First National Bank of Chicago, with the request that it open an account in the name of Douglass Van Dyke and William D. Van Dyke, Jr., trustees. That amount remained there untouched until about two days after Christmas, at which time they bought a $10,000 par United States Savings Bond for $7,500.00. They completed the investment of said funds about the middle of April, 1936, at which time they had used up the balance in the Chicago bank and opened an account in the Marine National Exchange Bank of Milwaukee, Wisconsin, by transferring three or four thousand dollars of the said amount thereto.

The First Wisconsin Trust Company, acting through George B. Luhman, its president, on the same day delivered the 135,000 silver dollars it so received to the First National Bank of Chicago, and the said amount, at its request, was immediately credited to the account of the First Wisconsin National Bank of Milwaukee, which bank thereupon credited the account of the First Wisconsin Trust Company.

George D. Van Dyke, the donor, Douglass Van Dyke and William D. Van Dyke, Jr., trustees under the first trust instrument, Louise Lawrence Van Dyke, the principal beneficiary under the first trust instrument, and Louise Van Dyke Hauxhurst, the principal beneficiary under the other trust instrument, are *all* residents of Milwaukee, Wisconsin, and the First Wisconsin Trust Company, trustee of the other trust, is a corporation organized under the laws of the State of Wisconsin and is located at Milwaukee, Wisconsin.

In collecting said bonds and silver dollars, George D. Van Dyke, the donor, never had any intention of bringing the silver dollars to Wisconsin, and said silver dollars, which weighed approximately 7½ tons, had never been in the State of Wisconsin. There was no attempt at secrecy or evasion in the transaction, and the trust instruments expressly provided that full disclosure should be made to the taxing authorities of the State of Wisconsin.

The trustees under each of said trust instruments made donees' returns to the proper taxing officers of Wisconsin, but claiming therein that said gifts were not subject to the Wisconsin gift tax. The assessor of incomes notified them, pursuant to provisions of the Wisconsin statutes, that such gifts in trust were subject to a tax under the gift tax law of Wisconsin, and that the taxes thereon would be certified for collection unless they protested the same in the manner

provided by the applicable Wisconsin statutes. The trustees duly protested and as the same facts and identical questions of law were applicable to the taxes on both gifts, the matters were heard together by the Board of Review, at which hearing the testimony and evidence were introduced. The Board of Review affirmed the assessment of gift taxes upon both gifts, and upon appeals by the trustees, the matters were reviewed by the Wisconsin Tax Commission upon the record made before the Board of Review, and on November 30, 1938, it entered orders affirming the assessment of gift taxes in each case. All of the foregoing procedure was in accordance with and pursuant to applicable provisions of the Wisconsin statutes.

From such orders of the Wisconsin Tax Commission the trustees of the respective trusts took separate appeals, pursuant to the Wisconsin Statutes, to the Circuit Court of Milwaukee County, Wisconsin, which on December 15, 1939, entered a judgment in each case affirming and sustaining the order of the Wisconsin Tax Commission. Thereupon the trustees appealed separately to the Wisconsin Supreme Court, which, pursuant to stipulation of the parties and order of the court, heard the cases together and affirmed the judgments of the Circuit Court, but entered separate judgments to that effect in each appeal on June 4, 1940.

The instant appeal is from the said judgment of the Supreme Court which sustained the tax on the gift in trust to the First Wisconsin Trust Company of Milwaukee, Wisconsin, as trustee under the second mentioned trust agreement. As before stated a companion appeal has also been taken to this Court by William D. Van Dyke, Jr., and Douglass Van Dyke, as trustees, from the judgment sustaining the tax on the other gift in trust. The same set of facts are involved and identical questions of law are raised and presented in both cases.

No Substantial Federal Question is Presented.

1. Sole Question Presented Is One of State Jurisdiction to Tax.

The Supreme Court of Wisconsin in its decision rendered June 4, 1940 (not yet reported but which is contained in the record herein) construed the Emergency Gift Tax Law of Wisconsin as applicable to and imposing a tax upon the gift in trust here involved, and held that as so construed and applied such taxing act was valid and constitutional as against the claim of appellants that the imposition of such tax violated the due process clause of the Fourteenth Amendment. The decision of the Supreme Court of Wisconsin so construing the statute is binding upon and must be accepted by the Supreme Court of the United States in testing the validity thereof under the Constitution of the United States.

Michigan v. *Michigan Trust Co.* (1932), 286 U. S. 334, 76 L. Ed. 1136, 52 S. Ct. 512;

Quong Ham Wah Co. v. *Ind. Accid. Com'n of Calif.* (1921), 255 U. S. 445, 65 L. Ed. 723, 41 S. Ct. 373;

Tampa Waterworks Co. v. *Tampa* (1905), 199 U. S. 241, 50 L. Ed. 170, 26 S. Ct. 23.

Thus, the only question of a Federal character that could be presented by this appeal is the constitutionality of the Emergency Gift Tax Law of Wisconsin in imposing a tax upon the gift here involved.

The appellant claims as a basis for appellate jurisdiction and assigns as error that the decision of the Supreme Court of Wisconsin is erroneous in holding:

(1) That the gift in trust concluded by the delivery of the silver dollars in the State of Illinois, by a resident of the State of Wisconsin to trustees, residents of Wisconsin, in trust for residents of Wisconsin is taxable under the Wisconsin gift tax law, because the State of Wisconsin lacked

jurisdiction to tax such gift and therefore the decision of the said court in favor of the validity of said statute, construed as imposing a tax on said gift, deprives appellants of property without due process of law in violation of Section 1 of the XIVth Amendment to the Constitution of the United States.

(2) That the silver dollars had acquired a constructive taxable situs at the domicile of the donor at the time of the delivery thereof.

(3) That the gift was in substance a transfer of intangibles having a constructive taxable situs at the domicile of the donor.

(4) That jurisdiction of Wisconsin to tax the actual transfer of silver dollars in Illinois, could be predicated upon a constructive situs at the domicile of the donor of the property transferred, whether deemed tangible or intangible.

Thus the sole question raised on this appeal is whether the gift in question is within the taxing jurisdiction of the State of Wisconsin.

It is appellees' contention that this presents no substantial Federal question because the decision of the Supreme Court of Wisconsin that said gift is within the jurisdiction of the State of Wisconsin to impose taxes is not contrary to any decision of the Supreme Court of the United States, but on the contrary is in accord therewith and is so clearly right as to not be a proper subject of review.

The Supreme Court of the United States will decline jurisdiction, although the constitutionality of a state law is drawn in question, where it appears that the constitutional question is not substantial in character.

Vilas v. *Iowa State Board of Assessment and Review* (1937), 302 U. S. 637, 82 L. Ed. 496, 58 S. Ct. 38;

Zucht v. *King* (1922), 260 U. S. 174, 176, 67 L. Ed. 194, 198, 43 Sup. Ct. 24.

2. The Decision Below is in Accord With Decisions of This Court and so Clearly Right as Not to be a Proper Subject of Review.

No substantial Federal question is presented by a contention that constitutional rights have been violated, where the question has been settled by prior decisions of the Supreme Court of the United States.

Utley v. *St. Petersburg* (1933), 292 U. S. 106, 78 L. Ed. 1155, 54 Sup. Ct. 593;

Manhattan L. Ins. Co. v. *Cohen* (1913), 234 U. S. 123, 58 L. Ed. 1245, 34 Sup. Ct. 874.

The purpose of gift taxes is to prevent or compensate for avoidance of death taxes by taxing gifts *inter vivos* of property, which but for the gifts *inter vivos*, would be subject in its original or converted form to taxes upon transfers at death. Thus, the gift tax is supplemental to the estate or inheritance tax; the two are in *pari materia* and must be construed together.

Estate of Charles Henry Sanford v. *Commr.* (1939), 308 U. S. 39, 84 L. Ed. (Adv. Sh.) 53, 60 Sup. Ct. (Adv. Sh.) 51;

Untemeyer v. *Anderson* (1928), 276 U. S. 440, 72 L. Ed. 645, 48 Sup. Ct. 353.

Therefore, statutes taxing transfers by gifts *inter vivos* are considered and read in the light of decisions of this Court relating to transfers in contemplation of or to take effect at death, and so far as the constitutional power to tax is concerned, there is no intelligible distinction between a tax upon the exercise of the power to give property *inter vivos* and the disposition of it by legacy.

Estate of Charles Henry Sanford v. *Commr.* (1939), 308 U. S. 39, 84 L. Ed. (Adv. Sh.) 53, 60 Sup. Ct. (Adv. Sh.) 51;

Burnett v. *Guggenheim* (1933), 288 U. S. 280, 77 L. Ed. 748, 53 Sup. Ct. 369;

Bromley v. *McCaughn* (1929), 280 U. S. 124, 74 L. Ed. 226, 50 Sup. Ct. 46.

The State of the owner's domicile may constitutionally impose a tax upon the transfer at death of tangible or intangible personal property which has not acquired an actual situs elsewhere, although the tangible personal property or the physical evidences of the intangible personal property may be outside of the domiciliary State, because such personal property has, for purposes of all taxation, a situs in law at the domicile of the owner thereof.

Curry v. *McCanless* (1939), 307 U. S. 357, 83 L. Ed. 1339, 50 S. Ct. 900;

First National Bk. v. *Maine* (1932), 284 U. S. 312, 76 L. Ed. 315, 52 S. Ct. 174;

Blodgett v. *Silberman* (1926), 277 U. S. 1, 72 L. Ed. 749, 48 S. Ct. 410.

The State of the owner's domicil may constitutionally impose a tax upon the transfer in contemplation of death of tangible or intangible personal property, which has not acquired an actual situs elsewhere, irrespective of where the tangible personal property or evidences of the intangible personal property may be.

Pearson v. *McGraw* (1939), 308 U. S. 313, 84 L. Ed. (Adv. Sh.) 139, 60 Sup. Ct. (Adv. Sh.) 211;

Bullen v. *Wis.* (1915), 240 U. S. 625, 60 L. Ed. 830, 36 Sup. Ct. 473;

Keeney v. *N. Y.* (1912), 222 U. S. 525, 56 L. Ed. 299, 32 Sup. Ct. 105.

The recent case of *Pearson* v. *McGraw* (1939), 308 U. S. 313, 84 L. Ed. (Adv. Sh.) 139, 60 Sup. Ct. (Adv. Sh.) 211, was followed by the Supreme Court of Wisconsin in rendering

its decision and conclusively establishes that the gift here involved is within the taxing jurisdiction of Wisconsin.

In that case a decedent domiciled in Oregon owned intangibles which for many years were in possession of an Illinois agent, who, at the decedent's direction, converted $450,000.00 of said intangibles into Federal reserve notes. The decedent executed an irrevocable trust agreement in Oregon pursuant to which the Federal reserve notes in Illinois were transferred to the said agent in trust for the benefit of certain designated persons. Five days thereafter the trustee converted the money into securities. After construing the various steps in the series which resulted in the transfer in trust as constituting but one integrated and indivisible transaction—a transfer by decedent of intangibles in contemplation of death--the court sustained an inheritance tax imposed by Oregon upon the transfer of the property in trust as a gift in contemplation of death on the authority of *Curry* v. *McCanless* (1939), 307 U. S. 357, 82 L. Ed. 1339, 50 Sup. Ct. 900. The court held that

> "constitutionally the property was 'within the jurisdiction of the state' of Oregon, since that jurisdiction is dependent not on the physical location of the property in the state, but on control over the owner."

Any difference in facts between *Pearson* v. *McGraw* and the instant case is without significance and does not in any way affect the force of the decision therein as controlling in this case. If anything that case was a *weaker* case upon which to sustain jurisdiction to tax than the instant case. In that case the transfer by gift was of Federal Reserve notes, the proceeds of property that had been in Illinois for many years in the hands of the trustee, to an Illinois trustee with the intention that the trust property remain and be administered there—and it did in fact so remain. Here the gift was by a Wisconsin donor of silver dollars, the proceeds of the redemption of Liberty Loan bonds previously

held by the donor at his domicil in Wisconsin, to Wisconsin trustees for Wisconsin beneficiaries, and the trust was to be and was administered in Wisconsin and the property comprising the trust *res* in fact was brought back to Wisconsin shortly thereafter.

Jurisdiction to tax intangibles or tangibles, which have not acquired a situs different than the domicile of the owner thereof, whether it be on the ownership, use or enjoyment thereof, is predicated upon the control over the owner thereof.

Curry v. *McCanless* (1939), 307 U. S. 357, 83 L. Ed. 1339, 50 Sup. Ct. 900.

Personal property, not having an actual situs elsewhere, has a situs at the domicile of the owner for the purpose of all taxation, including a tax upon the exercise of a constituent right therein, including the right to transfer. There is no distinction between a tax on property, the sum of all the rights and powers incident to ownership, and the taxation of the exercise of some of its constituent elements.

McGoldrick v. *Berwind-White Coal Mining Co.* (1940), 309 U. S. 33, 84 L. Ed. (Adv. Sh.) 343, 60 Sup. Ct. 388.

A transfer in contemplation of death like an ordinary gift *inter vivos* embodies a transaction begun and completed wholly by and between the living; the generating source of either type of gift is to be found in the facts of life and not in the circumstances of death. The only relationship that it has to death is that the value at death of the property is the measure of the tax imposed thereon, but this is a mere administrative device.

Helvering v. *Hallock* (1940), 309 U. S. 106, 84 L. Ed. (Adv. Sh.) 382, 60 Sup. Ct. (Adv. Sh.) 444;

Heiner v. *Donnan* (1932), 285 U. S. 312, 76 L. Ed. 772, 52 Sup. Ct. 358.

There is no tenable difference between the jurisdiction possessed by the States of the situs of property to tax transfers *inter vivos* and on the death of the owner.

Frick v. *Pa.* (1924), 268 U. S. 473, 69 L. Ed. 1058, 45 Sup. Ct. 603.

Jurisdiction to tax and the assertion of taxing power are interfered with only when the challenged tax is in *plain violation* of the constitution and there has been such flagrant abuse as may be remedied by some *affirmative* principle of constitutional law.

Newark Fire Ins. Co. v. *State Board* (1939), 307 U. S. 313, 83 L. Ed. 1312, 59 Sup. Ct. 918;

So. Pac. v. *Ky.* (1911), 222 U. S. 63, 56 L. Ed. 110, 32 Sup. Ct. 27.

From the foregoing it appears that the decision of the Supreme Court of Wisconsin on the Federal question was so plainly right as not to require reargument, and therefore no substantial Federal question is presented.

Re Boardman (1897), 169 U. S. 39, 42 L. Ed. 653, 18 Sup. Ct. 291;

Re Spies (1887), 123 U. S. 131, 31 L. Ed. 80, 8 Sup. Ct. 22.

Respectfully submitted,

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Attorney General of the State of Wisconsin;
HAROLD H. PERSONS,
Assistant Attorney General of the State of Wisconsin,
Counsel for Appellees.

P. O. Address:
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Madison, Wisconsin.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 266

FIRST WISCONSIN TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED DECEMBER 6, 1935,
Appellant,

vs.

WISCONSIN TAX COMMISSION; JOHN H. LEENHOUTS, ASSESSOR OF INCOMES OF MILWAUKEE COUNTY; STATE OF WISCONSIN, WISCONSIN DEPARTMENT OF TAXATION, AND ELMER E. BARLOW, AS COMMISSIONER OF TAXATION OF THE STATE OF WISCONSIN,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF WISCONSIN.

MOTION TO DISMISS APPEAL OR AFFIRM.

Comes now the Wisconsin Tax Commission; John H. Leenhouts, Assessor of Incomes of Milwaukee County; State of Wisconsin, Wisconsin Department of Taxation, and Elmer E. Barlow, as Commissioner of Taxation of the State of Wisconsin, appellees herein, by John E. Martin,

Attorney General of the State of Wisconsin, and Harold H. Persons, Assistant Attorney General of the State of Wisconsin, their counsel, and move this Court to dismiss with costs the appeal taken herein to this Court by The First Wisconsin Trust Company, as trustee under trust agreement dated December 6, 1935, upon the following grounds:

1. No substantial Federal question is involved.

2. The decision of the Supreme Court of Wisconsin is in accord with decisions of this Court.

3. The decision of said State court was so plainly right as not to require reargument.

In the alternative appellees move this Court to affirm on the ground that the questions on which the decisions of the cause depend are so unsubstantial as not to need further argument.

Dated this 3rd day of July, 1940.

JOHN E. MARTIN,
Attorney General of the State of Wisconsin;
HAROLD H. PERSONS,
Assistant Attorney General of the State of Wisconsin,
Counsel for Appellees.